The Solicitors' Journal

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CURRENT TOPICS

The Annual Report of the Council of The Law Society

THE measure of the work of the Council of The Law Society during 1951–52 is to be found in the 123-page Annual Report to 31st May, 1952, to be presented to the General Meeting of the members on 4th July, 1952. It records that, during the year, 22 Council meetings and 318 committee meetings were held. The President visited 17 provincial law societies and other members of the Council visited 12. The secretary visited 23. During the year membership continued to increase. On 31st May, 1952, there were 15,990 members, of whom 5,364 were in London and 10,626 in the provinces. On the corresponding date in 1951 the total membership was 15,590, of whom 5,243 were in London and 10,347 in the provinces. There are still 2,179 solicitors holding practising certificates who are not members and many more solicitors engaged in the law not holding practising certificates who have not joined the Society. When the range and comprehensiveness of the activities of the Council are considered, it is surprising that there should be one solicitor left who has not joined the Society.

Solicitors' Remuneration

ONE of the highlights of the Report is the memorandum, set out in an appendix, which was submitted in April, 1952, to the Lord Chancellor as Chairman of the Supreme Court Rule Committee, which is ultimately responsible for fixing solicitors' charges in High Court litigation. The memorandum suggested that itemised charges should be dispensed with altogether and that a solicitor should be entitled, as are other professional men, to charge his client a sum which is fair and reasonable, having regard to all the circumstances of the case. It was intimated that the Council would welcome the opportunity of waiting by deputation on the Lord Chancellor to discuss the proposal, but this deputation has not yet been received. A copy of the memorandum was also sent to the Committee on Supreme Court Practice and Procedure. Except for "Instructions for Brief," the memorandum states, the drawing up of a bill of costs takes no account of the amount at stake, the complexity of the matter or the specialised knowledge and responsibility of the solicitor. The memorandum refers to the fact that most charges stand at only 50 per cent. above the level fixed in 1883, and says that the itemised bill is a legacy from the days when the attorney was regarded primarily as a clerk and paid on the basis of the physical steps taken in the conduct of a case. As regards non-contentious matters, it is interesting to find appended to the memorandum the proposed new Schedule II to the Solicitors' Remuneration Order, 1883, which has been submitted to the Statutory Committee under s. 56 of the Solicitors Act, 1932. The Committee, whose first meeting as originally fixed was postponed owing to the General Election, met for the first time in February, 1952, and the Council's proposals are still under consideration by that Committee, at whose request the Council have prepared a further memorandum bringing up to date the reasons why they thought their recommendations were justified. The proposed new Schedule II is based on the

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principle of fair and reasonable remuneration, having regard to the complexity, difficulty or novelty of the questions raised, the amount involved, the importance of the matter to the client, the skill, labour, specialised knowledge and responsibility involved, the number and importance of documents prepared or perused, the place and circumstances of the transactions and the time expended.

The Law Society's Conditions of Sale

IT is expected, says the Report, that the new edition of The Law Society's Conditions of Sale will be available well before the end of the year. Clauses prepared by counsel to give effect to the Bristol Incorporated Law Society's recommendations have been circulated to provincial law societies and to the City of London Solicitors' Company and, as a result, there has been a considerable change of view on the part of the profession, less than half of the provincial law societies showing that they still favoured the inclusion in The Law Society's General Conditions of Sale of a provision which would enable solicitors acting for purchasers to make all the usual searches and inquiries after the signing of the contract. In these circumstances counsel was instructed to redraft the clauses as Special Conditions which could be adopted or struck out as desired.

The Council's Memorandum on Marriage and Divorce

IN the course of a detailed memorandum submitted by the Council of The Law Society to the Royal Commission on Marriage and Divorce, and appended to the Report, it is recommended that it should be possible for a husband to claim damages against a male adulterer in a petition for divorce only on the ground of adultery, and that a wife should be enabled to claim damages against an adulteress in such a petition; that collusion as a bar to relief should be abolished; and that the law should be amended to enable a divorce to be obtained on the ground that the respondent is of unsound mind, with no reasonable expectation of recovery, and has been of unsound mind for at least two years. The apportionment by law of the income of the husband or wife between the parties to a marriage is not recommended. It is recommended that the restriction on petitions for divorce during the first three years after marriage should be abolished; and that a wife who has divorced her husband (unless awarded secured maintenance) should have the same rights as a wife under the Inheritance (Family Provision) Act, 1938, where a will is made. The memorandum recommends that there should be a summary procedure in the High Court (similar to that in courts of summary jurisdiction) for the enforcement of orders for maintenance.

Lord Merriman on Collusion

IN last week's "Topic" on "Collusion," we referred to the difficult questions which solicitors for parties to divorce proceedings have to solve in regard to the often necessary negotiations for maintenance and custody. The oral evidence of LORD MERRIMAN on this and other subjects connected with divorce, taken before the Royal Commission on Marriage and Divorce, was reported in full in *The Times* of 20th June. Lord Merriman said of the Matrimonial Causes Act, 1937, that it had fully justified the expectation that it would produce a great measure of fairness and reality in the divorce law. He thought it was inevitable that there would be a certain amount of deliberate deception, but this was not due to the inadequacy of the law itself. He said the real aim of collusion was to provide against a corrupt bargain being put forward on false grounds to deceive the court and agreed with Mr. Justice HOLROYD PEARCE that there was some considerable confusion about what collusion was and that it would be better to have a clear definition. It was the element of corruption about collusion that was wrong, he said, and although steps should be taken to ensure against people "buying divorce," he thought it "quite absurd" that discussions between the parties about figures for maintenance and damages should be regarded as collusion. Solicitors will be grateful to the President for his clear pronouncement, which will clear up many doubts.

Preventive Detention

IN the Court of Criminal Appeal on 16th June (*The Times*, 17th June), the LORD CHIEF JUSTICE said that the object of preventive detention was to protect the public from those who had shown by their previous history that they were a menace to society while they were at large. If a court was of opinion, whatever a man's record might be, that for the particular offence or offences for which he was sentenced the court was not prepared to deprive him of his liberty longer than was involved in a sentence of five to seven years, the sentence should be one of imprisonment except in the case of elderly men. It had become a matter of putting a man where he could no longer prey upon society, even though his depredations might have been of a comparatively small character, as in the case of habitual sneak thieves.

Local Government and the Rural District Council

IN a farewell letter on his retirement, the chairman of the Rural District Councils' Association (Mr. NEVILLE HOBSON) referred to his twenty-five years' membership of the council and the five years of his chairmanship, and recorded impressions formed during journeys to many parts of England and Wales. He praised the work of rural district councils and said that though their population was relatively small, being only about one-seventh of the total for England and Wales, the men and women in the agricultural areas were responsible for the fertility and stability of about two-thirds of the whole country. He reminded those who advocated a radical reconstruction of local government that, prior to the passing of the Local Government (Boundary Commission) Act, 1945, the associations were invited by the Government to consider what general principles should be embodied in the regulations to be prescribed for the guidance of the Commission; and there was consensus that the object of alterations in status and boundaries should be to ensure, individually and collectively, effective and "convenient" units of local government administration. It was also agreed by the associations and Ministers that the following factors, among others, should be duly considered: community of interest, economic and industrial characteristics, physical features (including communications and accessibility to administrative centres and centres of business and social life), population (size, distribution and characteristics), record of administration, size and shape of area, wishes of the inhabitants. The association had always recognised that there are certain parts of Lancashire, Yorkshire, the Black Country, South Wales and other populous areas which are suitable for one-tier government—just as a county borough of adequate size constitutes a satisfactory type of all-purpose authority. These areas (not to mention London and the neighbourhood) had, however, little affinity with a typical rural district. He concluded that the only way of increasing knowledge of local government affairs in rural England and Wales was a substantial continuance of the existing representation and the maintenance of the closest personal contact between the parochial communities and their district councils.

INFANTS' SETTLEMENTS AGAIN

Two recent articles on "Infants' Settlements" (95 SOL. J. 491) and on "Covenants to Pay Income" (95 SOL. J. 616) have aroused some interest among readers, and it is now proposed to consider one or two other matters appertaining to the same subject.

Extra-Statutory Concession

It will be recalled that one difficulty with which the first article was concerned to deal was that of ensuring that the income of the settled funds would not be deemed to be that of the settlor at any time in the future whilst at the same time ensuring that no estate duty could become chargeable upon the settled funds on the death of the settlor after the expiration of five years. If the infant takes his interest at twenty-one years then, by the Income Tax Act, 1952, s. 397 (3) (formerly the Finance Act, 1936, s. 21 (3)), the income for the last preceding year is deemed to be that of the settlor unless the infant was married at the commencement of that year. It is for this reason that it has become customary to postpone the vesting of the infant's interest until he attains twenty-two years. Unfortunately this imports a risk that estate duty will be payable if the settlor should unhappily die between the infant's twenty-first and twenty-second birthdays.

There exist, however, certain constitutional monsters known as "extra-statutory concessions," and No. 22 of those which were published as being in force on 31st December, 1949, is expressed as follows:—

> "Section 21 (3), Finance Act, 1936, provides in general that sums paid under an irrevocable settlement of capital to a child of the settlor, being a child who is an infant and unmarried at the commencement of the year of assessment in which the sum is paid, are to be treated for income tax and sur-tax purposes as the income of the settlor and not of the child. Sums which have been accumulated under such a settlement contingently on the child attaining the age of twenty-one or marrying and which are handed to the child on the happening of either contingency are not regarded as caught by the subsection."

Now it is a little difficult for practitioners to show much enthusiasm for extra-statutory concessions and the like. For one thing there is a feeling that when the Legislature has solemnly enacted that a thing be done then it ought to be done, and neither an inspector of taxes nor the Board of Inland Revenue nor yet the Lords Commissioners of Her Majesty's Treasury sitting *in banc* (if the Government Whips ever do so meet) should be able to say that they will not take any notice of the statutory provision. It is an interesting question for speculation, if A is a vindictive man and learns that his enemy B has benefited from one of these concessions, whether A could get a mandamus directed to the appropriate inspector of taxes directing him to raise an assessment. After all, he has a financial interest in the matter. Apart entirely from these theoretical considerations the practitioner is unwilling to advise his client to execute a document which brings him within the range of a taxing statute, relying upon nothing more than a concession which, no doubt, could be withdrawn without notice.

Nevertheless, in this particular matter, there is much to be said for relying upon concession No. 22 and making the infant's interest vest on his or her majority. If the concession remains operative all will be well—nothing will be lost by way of income tax or sur-tax and there will be no possibility of a charge to estate duty once five years have elapsed. If the concession does not remain operative, then the Income Tax Act, 1952, s. 397, does not render all the income under the settlement liable to be taxed as the settlor's but only affects the last year of assessment. Each case must be judged on its merits, but in most cases the risk of this happening may be regarded as a reasonable price to pay for obviating the risk of a charge to estate duty.

Settlements by way of Portion Terms

It will be recalled that the possible charge to estate duty arises because, by the Law of Property Act, 1925, s. 164 (1), the only period of accumulation available to a settlor who wishes to postpone vesting beyond the infant's twenty-first birthday is his own life. It is not to be forgotten that by s. 164 (2) (ii), where the beneficiaries of the settlement are the children or remoter issue of the settlor, the limitations of the section do not apply to a provision for raising portions. Hence, if the settlement can be brought within this exception, the provisions for accumulation will not come to a premature end on the death of the settlor and the charge to estate duty will not arise.

It must be remembered, however, that, speaking in general terms, this form of settlement is only available where the bulk of the property is to go to one child (often the eldest son) and the portions for the other children are, as it were, subsidiary to his interest. Thus it is not appropriate where there is only one child. Were the rule not thus the provisions against excessive accumulation could be evaded by calling everything a portion. Thus, in *Edwards* v. *Tuck* (1853), 3 De G.M. & G. 40, Lord Cranworth said:—

> "... a direction to accumulate all the person's property to be handed over to some child or children when they attain twenty-one can never be said to be a direction for raising portions ... it is giving everything."

It must also be remembered that s. 164 (2) (ii) was considered by the Court of Appeal in *Re Bourne's Settlement Trusts* (1946), 62 T.L.R. 269, and it is apparent from that case that where the subsection is to be relied upon the settlement must be drawn in such terms that the fund must necessarily be devoted to raising the portions. If, as in that case, the fund is one which may or may not, at the discretion of the trustees, be so applied, then s. 164 (2) (ii) has no application and, on the untimely death of the settlor, the accumulations will come to an end with disastrous results.

What Is a Settlement?

In one's own infancy one was invited to accept the proposition that a door ceased to be a door when it was ajar; the effect of the Income Tax Act, 1952, s. 397, as it is now construed, is that an absolute gift ceases, at any rate for tax purposes, to be an absolute gift when it is to an infant child of the donor. In *Thomas* v. *Marshall* [1952] 1 T.L.R. 155 a father opened post office savings bank accounts in the names of his children and from time to time paid sums into these accounts. He also from time to time bought holdings of defence bonds for his children. Donovan, J., held that the definition of a settlement in the Finance Act, 1936, s. 21 (now Income Tax Act, 1952, s. 397), including as it did a "transfer of assets," was wide enough to take in an absolute gift. Hence, it followed that both the opening of the accounts and the purchases of the defence bonds were settlements within the section so that the interest thereon must be deemed to be that of the donor. Although the learned judge first considered the arguments without reference to any authority binding him he stated at the end of his judgment that he was in

any case, bound by *Hood-Barrs* v. *Inland Revenue Commissioners* [1946] 2 All E.R. 768.

That decision has now been reviewed by the Court of Appeal. The difficulty of the taxpayer lay, of course, in the fact that if the *Hood-Barrs* case was good law it was equally binding upon the Court of Appeal as on Donovan, J., and the greater part of the leading judgment was taken up by an examination of an able and ingenious argument that the *Hood-Barrs* case had been impliedly overruled by *Vestey's Executors* v. *Inland Revenue Commissioners* [1949] 1 All E.R. 1108, a decision of the House of Lords upon the Finance Act, 1938, s. 38. The whole matter is a most interesting exercise in the application of the doctrine of *stare decisis*, but in the event the court considered itself still bound by the *Hood-Barrs* case and upheld the judgment of Donovan, J. Both Birkett and Romer, L.JJ., expressed regret that they were unable to consider the matter free from authority, and both expressed themselves to be attracted by the arguments on the merits of the question which were advanced on behalf of the taxpayer. Leave was given to appeal to the House of Lords, who, of course, are not bound by the *Hood-Barrs* case, and their lordships' views will be awaited with interest.

In the meantime it is the law that if a father gives his child £100 at Christmas he ought to inquire at the end of the year whether the child has managed to invest it to bring in at least £5—if he has, then the father ought to declare it as part of his income. So also, if a father gives his son a motor car and the son is unfortunate enough to convert the car into a total loss and collects insurance money which he invests until he can acquire another car, then the interest on that money is deemed to be the father's for tax purposes. That is the result of the Income Tax Act, 1952, s. 397 (9) (*b*), which provides that "the expression 'settlement' includes any disposition, trust, covenant, agreement, arrangement or transfer of assets." Not unnaturally, counsel for the taxpayer referred to the words of the present Lord Chancellor in *St. Aubyn* v. *A.-G.* (*No. 2*) [1952] A.C. 15, where he said:—

> "No one, lawyer, business man or man in the street, was ever heard to use such language to describe such an act and I decline to stretch the plain meaning of words in an Act of Parliament in order to comply with what is said to be its purpose."

Any further discussion of the point must await the decision of the House of Lords, but one question may be posed which does not seem to have been answered. In so far as the matter turned upon a "transfer of assets," what were the assets which were transferred? Certainly not defence bonds, because none were ever registered in the father's name; certainly not cash, because the children never received any—all they received were governmental debts. This, of course, does not mean that the transactions might not have been "dispositions."

G. B. G.

A Conveyancer's Diary

ESTATE AGENTS' COMMISSION

THE number of reported decisions on the right of an estate agent to commission in connection with the sale of his principal's property since *Luxor (Eastbourne), Ltd.* v. *Cooper* [1941] A.C. 108 has been so large, and the circumstances which produced them so diverse, that it had become difficult to see the principle, if any, on which they were based. It is thus with feelings of gratitude that we turn to a passage from the judgment of Jenkins, L.J., in *Midgley Estates, Ltd.* v. *Hand* [1952] 1 T.L.R. 1452; p. 375, *ante*, which helps to put these cases in perspective. In the course of his judgment the learned lord justice said: "So far as any general principle is deducible from the authorities, their effect may, I think, be thus summarised: the question depends on the construction of each particular contract, but *prima facie* the intention of the parties to a transaction of this type is likely to be that the commission stipulated for should only be payable in the event of an actual sale resulting. The vendor puts his property into the hands of an agent for sale and, generally speaking, contemplates that if a completed sale results, but not otherwise, he will be liable for the commission, which he will then pay out of the purchase price. That is, broadly speaking, the intention which, as a matter of probability, the court should be disposed to impute to the parties. It follows that general or ambiguous expressions, purporting, for instance, to make the commission payable in the event of the agent 'finding a purchaser,' or in the event of the agent 'selling the property,' have been construed as meaning that the commission is only to be payable in the event of an actual and completed sale resulting, or at least in the event of the agent succeeding in introducing a purchaser who is able and willing to purchase the property."

In the light of these general observations it may be useful to review very briefly the effect of the main decisions on this subject of the last ten years, that is, since *Luxor (Eastbourne), Ltd.* v. *Cooper*. That was itself an unusual case, the contract stipulating for commission to be payable to the agent "on completion of sale" by a person introduced by the agent. The agent introduced a potential purchaser, but the vendors sold to a third person. The House of Lords held that no commission was payable, and refused to follow the Court of Appeal in implying a term to the effect that the vendors should do nothing to prevent the agent from earning his commission. But the decision is usually cited for the general views expressed on the construction of contracts to pay commission, and is now usually regarded as the source of all the modern learning on the subject. Thus, in *Jones* v. *Lowe* [1945] K.B. 73, the words "introducing a purchaser" in this contract were construed, on the authority of *dicta* in the *Luxor* case, to mean introducing a person who signed a binding contract to purchase. To the same effect are *McCallum* v. *Hicks* [1950] 2 K.B. 271 ("find someone to buy my house") and *Bavin* v. *Bunney* (1950), 94 SOL. J. 210 ("if property sold through agent's introduction").

But an instruction to find a purchaser, and an agreement to pay commission on the introduction of such a person, presuppose that the purchaser is an able and willing purchaser; the mere signature of a contract is not sufficient if the purchaser cannot then complete (*Poole* v. *Clarke & Co.* [1945] 2 All E.R. 445). The payment of a deposit does not necessarily signify ability for this purpose (*ibid.* and *Fowler* v. *Bratt* [1950] 2 K.B. 96). But a purchaser may be an "able and willing" purchaser despite the fact that he has not got the whole of the purchase price available at the time of the introduction; the date of completion is, obviously, the testing time for this (*Dennis Reed, Ltd.* v. *Nicholls* [1948] 2 All E.R. 914).

Vague expressions have been construed in the same way, viz., as equivalent to the introduction of a person who enters into a binding contract to purchase and, *semble*, on the authority of the cases last mentioned, is able and willing to purchase. An example of such construction is *Murdoch*

Lownie, Ltd. v. *Newman* (1949), 65 T.L.R. 717 (" in the event of business resulting ").

In the cases so far considered, completion of the contract of sale was not considered to be a condition of the accrual of the right to commission, and to these cases may be added the most recent decision of all, *Midgley Estates, Ltd.* v. *Hand*, *supra*, where the sale was never completed, but the agent's right to commission was not affected by the default of (in this case) the potential purchaser. Different considerations, of course, arise where the contract to pay commission in terms depends on the completion of the contract of sale, as in the *Luxor* case itself.

A contract in writing is not necessarily a binding contract for the purpose of determining the agent's right to commission ; for example, there is no binding contract if the contract of sale is conditional on something being done, such as a survey being made (*Graham & Scott (Southgate), Ltd.* v. *Oxlade* [1950] 2 K.B. 257), or on agreement being reached between the parties on road charges (*Dennis Reed, Ltd.* v. *Goody* [1950] 2 K.B. 277). This last decision of the Court of Appeal may be treated as having overruled *Giddy and Giddy* v. *Horsfall* (1947), 63 T.L.R. 160 and *G. H. Bennett & Partners* v. *Millett* (1948), 64 T.L.R. 612. Somewhat analogous is the case of *Bennett, Walden & Co.* v. *Wood* (1950), 66 T.L.R. (Pt. 2) 3, where the expression " in the event of securing an offer of £x " was construed as contemplating a firm offer, and not an offer to purchase " subject to contract."

Commission is not earned under a contract to pay commission on the introduction of a purchaser if the vendor either sells the property to another or withdraws it from sale before the purchaser introduced by the agent enters into a binding contract (*G. P. Nelson & Co.* v. *Rolfe* [1950] 1 K.B. 139 and *Bavin* v. *Bunney*, *supra*). But signature of a contract by the potential purchaser is, apparently, sufficient even if the vendor does not sign, at any rate where the contract between principal and agent is to pay commission on the introduction of " a person willing to sign a contract to purchase " (*Trinder and Partners* v. *Haggis* (1951), 95 SOL. J. 546).

With the exception of the two decisions which can no longer be regarded as authority, all these cases exemplify in one way or another the broad principle that, if commission is to be earned, there must be a person to whom the vendor can look for the payment of his purchase money out of which the commission is to be satisfied. As a matter of construction, the courts have repeatedly found this intention to be implicit as between the principal and the agent. But this intention may, of course, be openly expressed, as it was (according to the judgment of the Court of Appeal) in the somewhat special case of *Boots* v. *E. Christopher & Co.* [1952] 1 K.B. 89, a case which also makes it clear that a vendor is under no obligation to his agent to sue a purchaser for the purpose simply of enabling the agent to earn his commission.

Contracts between estate agents and their principals run to no common pattern and their construction will often be a matter of doubt and difficulty. But the number of changes which can be rung on the expressions most commonly used in these contracts, such as " able and willing purchaser " or " sign a contract of purchase " is limited, and as a good many of the component parts of these expressions, if not the whole of any expression which may be used on a particular occasion, have been construed in the recent cases, these decisions and the statement from *Midgley Estates, Ltd.* v. *Hand* of the general principle to be followed in their application to a given case which prefaces this article should enable the practitioner to advise on any but the most exotic with a fair degree of certainty.

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Landlord and Tenant Notebook

HOLDING OVER : THE HABENDUM

THE strength of the presumption that a tenancy created by holding over is a tenancy from year to year was critically examined in *Ladies' Hosiery & Underwear, Ltd.* v. *Parker* [1930] 1 Ch. 304, and less critically so in *Covered Markets, Ltd.* v. *Green* [1947] 2 All E.R. 140. The complacency of those who had unconsciously come to think of the presumption as irrebuttable may be said to have been rightly disturbed by the first-mentioned decision, but to some extent restored by the more recent one, the exact *ratio decidendi* being, however, difficult to discern. And now *Adler* v. *Blackman* [1952] 2 All E.R. 41 ; *ante*, p. 396, has shown us that the question of the duration of a new tenancy created by holding over may require the consideration of more factors than a perusal of the two authorities concerned might suggest. For it did appear, when *Ladies' Hosiery, etc.* v. *Parker* had been decided, that the way in which the *reddendum* of the original tenancy was expressed was, to say the least of it, of vital importance ; if rent was *measured* by reference to an annual yield, the new tenancy would be a yearly one, though payments were not made payable at times corresponding to a year or aliquot part of a year : but if the rent was measured by reference to a different period, the new tenancy would be a periodic tenancy with that period accordingly. This decision was then " distinguished " in *Covered Markets, Ltd.* v. *Green*. And now, in *Adler* v. *Blackman*, Ormerod, J., has applied the reasoning of Maugham, J., in *Ladies' Hosiery, etc.* v. *Parker* and " not followed " the decision of Macnaghten, J., in the more recent case.

I say " applied the reasoning " because Maugham, J.'s utterances are entitled to the status of *obiter dicta* only ; both because he decided the issue without it and because the Court of Appeal came to the conclusion that in the somewhat unusual circumstances of the case he ought to have found that no tenancy existed at all, there being no consensus. The question whether there was a weekly or a yearly tenancy was, incidentally, raised by the defendant in a counter-claim ; the claim itself was not based on a tenancy or notice to quit. Maugham, J.'s proposition was, however, carefully worked out, older authorities being cited in support ; while the judgment in *Covered Markets, Ltd.* v. *Green* does not indicate with the clarity desired what value the learned judge attached to what facts.

If, then, we are to attempt to obtain guidance from the new decision, the other two should be examined with some care. And the first thing that strikes us about *Ladies' Hosiery, etc.* v. *Parker* is that the *reddendum* factor, which came to be regarded by some of us as *the* decisive factor, was not one of the six circumstances on which Maugham, J., based his judgment. The facts were complicated, and I do not propose to try to summarise the history of the events (it occupies more than eight pages in the report), but those relied on by the learned judge were: (1) the agreement in writing relied on by the defendant, under which he had held a tenancy of a strip of land and a shed thereon for three years till 1917, this tenancy being carved out of an underlease which had expired in 1923, gave him more than what was claimed in the action ; and

the terms of that agreement, including covenants to repair and deliver up, as to user, against alterations to buildings, etc., could hardly be made applicable to a yearly tenancy of what was claimed (the boundary apparently went through the shed); moreover, the rent would have to be apportioned. (2) Some eight years had elapsed between the expiry of that agreement and the alleged consensus; and some time had also elapsed between the acquisition of their interest by the plaintiffs and their becoming aware of the agreement. (3) The rent being payable weekly, they would naturally suppose the tenancy to be a weekly one. (4) Nor did it occur to the defendants (the original tenant and his wife) that there was an existing yearly tenancy. (5) The plaintiffs, who had acquired a lease of part of the land in 1920, were bound by that lease not to sub-let without consent. (6) In 1923 the tenant had transferred to his wife the business which he and she carried on on the premises. Pausing there, Maugham, J., remarked that as against those considerations there was the fact that the plaintiffs had accepted the weekly payments of rent since December, 1925; but that on balance, performing the functions of a jury, he held that there had been no consensus under which the ex-tenant had become tenant from year to year of the plaintiff company.

It was because the case might go further that the learned judge went on to express his views on the other point, holding that (7) the fact that the original three years' agreement had reserved a weekly rent payable weekly (with a right of re-entry on rent being seven days in arrear!) would likewise warrant the conclusion that the holding over was from week to week. If the rent had been *measured* by reference to a year, though paid at smaller intervals, it would have been different; but this was not a case of a rent of £104 per annum payable weekly. And the learned judge cited, *inter alia*, a passage from the judgment of Parke, B., in *Braythwaite* v. *Hitchcock* (1842), 10 M. & W. 494, in which this rule is expounded.

No doubt some criticism can be levelled at some of the findings and inferences made and drawn in the first six points, and this may well explain what happened in the Court of Appeal (whose judgments are not reported); but at the moment all I wish to do is to emphasise that there were facts other than the *reddendum* consideration—the nature of the premises, the ignorance and innocence of persons concerned, etc., all played their part, though it is true that in Maugham, J.'s opinion the fact that rent had not been paid "with reference to a year, or any aliquot part of a year" (Parke, B.'s above-mentioned judgment, itself invoking an older decision, that of *Richardson* v. *Langridge* (1811), 4 Taunt. 128) would in itself disentitle the defendants to the declaration which they claimed.

In *Covered Markets, Ltd.* v. *Green* the somewhat sketchy report tells us that the tenant of a lock-up fish shop who had held a seven-year lease at £3 a week payable in advance and which had expired in 1941 or 1942 (both part and counterpart had been lost) had stayed on, paying the same rent at the same times, till given notice to quit on the footing that he was a weekly tenant. Macnaghten, J., said that, in *Ladies' Hosiery & Underwear, Ltd.* v. *Parker*, Maugham, J.'s observations about the *reddendum* had not excluded the possibility of a tenant whose rent was payable weekly becoming a yearly tenant by holding over. (Nor, one might say, had they, provided that the *reddendum* measured rent by the year, which it apparently did not in the case before Macnaghten, J.) And the learned judge said that the circumstances were "very different," though he mentioned only two, or possibly three, differences; he was dealing with a shop, not a piece of vacant ground—this does seem to be an exaggeration, for the defendants in the earlier case had undoubtedly carried on a business on the premises, as general dealers and fruiterers; the land (with shed) was near a busy thoroughfare in the Metropolis; the original term was seven, not three, years; and several years had elapsed during which the tenant had been allowed to stay on (in the earlier case, several years had elapsed; but during many of them the parties were ignorant of their actual rights).

The facts of *Adler* v. *Blackman*, i.e., the facts proved, but not all considered relevant, began with the grant of a weekly tenancy of a shop by the plaintiff's predecessor in title to the defendant, the rent being £1 8s. 6d. per week. This lasted for some years, and then the parties entered into a written agreement; the tenant "to hold for one year to commence from 22nd December, 1947, at the inclusive weekly rent of £3 payable weekly in advance on every Monday . . ."; the tenant undertook repairs, and the landlord might re-enter if rent were fourteen days in arrear. The year having expired, the tenant went on paying the £3 a week every week; the landlord sold the premises in 1950 to the plaintiff, who promptly gave the defendant notice to quit on the footing that the tenancy was a weekly one. The tenant "accepted" the notice and claimed and took proceedings for compensation or a new lease under the Landlord and Tenant Act, 1927, which failed. Negotiations for a new lease likewise failed. But when a writ was issued and proceedings for possession were taken under Ord. 14, the defendant set up the contention that he held a yearly tenancy.

Ormerod, J., said that if he had to decide a point made that the defence could not be raised because of the defendant's reactions to the notice, he would decide it in the landlord's favour, in view of *Davis (W.) (Spitalfields), Ltd.* v. *Huntley* [1947] 1 All E.R. 246. In that case, application for a new lease was held to estop a tenant from impugning the notice to quit; but the old notion that a bad notice is incurable had been disposed of by *Re Swanson's Agreement* (1946), 90 SOL. J. 643.

Deciding the case by reference to the question of *habendum*, the learned judge (*a*) excluded the original weekly tenancy from consideration, the one year's agreement having had different terms, (*b*) attached great importance to the fact that the rent under the latter was expressed to be a rent of £3 a week and was never calculated by reference to a yearly sum, (*c*) also taking into account the conduct of the parties subsequently to its expiration and up to *and after* the notice to quit was given.

The lesson appears to be that the presumption may be rebutted by any facts, there being no classification possible, which evidence an intention to continue on the basis of a tenancy other than a tenancy from year to year; but that most important among such facts would be the fact that the old agreement reserved a rent otherwise than by reference to a year's yield.

R. B.

The Queen has approved the appointment of Mr. FREDERICK HENRY CURTIS-BENNETT, Q.C., to be Deputy Chairman of the County of Essex Quarter Sessions.

The Queen has signified her intention of appointing Mr. DENNIS NEIL O'SULLIVAN to be a stipendiary magistrate for the City and County of Kingston upon Hull.

The Lord Chancellor has appointed Mr. DERMOT ST. OSWALD MCKEE to be a Judge of County Courts with effect from the 23rd June, 1952, and has directed that he shall be judge, jointly with Judge Stewart, of Circuit No. 14 (Leeds, etc.), and that, owing to the illness of Judge Hamilton, he shall sit as additional judge of Circuit No. 23 (Coventry, etc.) for two months.

HERE AND THERE

THE FADING FOOTPATH

AN article in last Sunday's *Observer* (not a very long or a very prominently placed article) showed that someone at least was thinking about "Saving Ploughed Paths" and it's just as well to have a look at the way things are going in the country, especially when they are familiar things, and they are going very fast. It happens that just at the moment footpaths and bridle-paths need watching rather carefully. It is true that, despite the enormous vested interest in personal immobility represented by the television industry and the motor-car industry, it has not yet been made illegal to go for a country walk. Indeed, thousands of Londoners are allowed to receive a valuable weekly walking lesson by courtesy of their evening newspaper. But along with the industriously propagated suggestion that the poor old friendly horse is "on his way out," there goes a set in the tide of events which, long enough maintained, might well wash out the foot-print as well as the hoof-print till it would be as strange and startling a find in an English field as on Crusoe's island. Shielded as they are by the enfolding wings of statutory safeguards, you would not think that in the century of the common man his footpaths could come to much harm, but this is one of those cases where the machine is against him and his rights remain inalienable only (as they say in administrative circles) when circumstances permit. There are, of course, the larger, more majestic manifestations of *force majeure*, as, for instance, where North Weald Bassett near Epping is squeezed between a military aerodrome on the one side and a Post Office radio station on the other, each extending and encroaching on its former communications by fields and woodlands. But there's something else, less overmasteringly and browbeatingly official than that. It is the steady, progressive blotting out of the old tracks whenever a farmer thinks that no one will bother to challenge him plain and flat, and more often than not he thinks right, with all the children riding to school by bus and all the agricultural workers using cycles instead of short cuts. Between large-scale tractor ploughing and the chopping down of hedges a track soon ceases to be visible to the naked eye—and out of sight out of mind.

'WARE WIRE

NOWHERE are the old tracks being blocked faster than in some parts of the South Downs now that the sheep bells are silenced and the once smooth, soft turf is ploughed up into some of the stoniest wheat fields I have ever seen. From Chanctonbury Ring westwards towards Amberley Mount, from the heights above Storrington southwards towards Michelgrove, the barbed wire fences are gradually extending their lines, cutting across paths more often than not without leaving gate or opening. O who will o'er the Downs so free with a pair of wire cutters? On the face of it the situation is paradoxical. Under the jealous feudal barons and the envious landlords of the Enclosure Acts sheep might safely graze and men walk where they would from the Devil's Dyke to Duneton Hill; it has taken the century of the common man and of the National Parks and Access to the Countryside Act (what a mouthful of a name for an instinctive impulse!) to see the Downland rider and walker within measurable distance of being as strictly confined to a few hard-beaten tracks as if he were in Oxford Street. Of course, the lawyer well knows that just because a track or path is visible to the naked eye or marked on an ordnance survey map that does not mean that it is dedicated to the public, but it is one of the weaknesses of public rights of all descriptions that whereas one man can be perfectly clear about his own personal rights a hundred or a thousand men will be vaguer and hazier about some common right—the larger the group the vaguer and hazier their notion. Besides, the techniques of war-time government have planted in the governed a fixed presumption that whatever is done with confidence is done with authority. So when land-owners run wire across the tracks the general instinct is to say that they wouldn't do it if they hadn't got a right to and leave it at that. Well, that's just what needs watching. I see the Commons, Open Spaces and Footpaths Preservation Society has been approaching the Ministers, the county councils and the National Farmers Union in an effort to save the footpaths now being ploughed up in contravention of the Act, which, curiously enough, does not specify who is to be responsible for reporting breaches to the highway authority. Local councils are often afraid to do anything which might seem to discourage the growing of food, while individual councillors may perhaps be a little too ready to see the point of view of their neighbours. I believe the Ministry of Housing and Local Government has suggested that the human and the divine might blend to combine the Rogationtide processions with a perambulation of public rights of way. That would, no doubt, be better than resurrecting the execrated common informer, although the execration really sprang from the fact that he was a common nuisance trying to enforce regulations that nobody wanted enforced. In another context there is no particular reason why he should not represent the common conscience. Anyhow, one way or another, the old tracks will be tractor-ploughed out of existence unless somebody is vigilant for common legal rights. Can the country lawyers combine to join the watch?

TAILPIECE

FROM "Hobson's Choice" at the Arts Theatre: "Honest men live by business; lawyers live by law."

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Remuneration of Solicitors' Managing Clerks

Sir,—I wonder how many solicitors' managing and other clerks would agree with the statement made by Mr. A. J. Newsome, Coventry, in his letter (SOL. J., 17th May, 1952) that experienced staff are highly paid? Perhaps his staff are the exception proving the general rule.

I recalled his letter when I read the annual report of The Law Society, 1951–52, which informs us that the special committee on the recruitment of clerks for the solicitors' profession have submitted to the Council a report on the steps that should be taken to encourage the recruitment of unadmitted staff for solicitors' offices, and that what shall be done next is now under review. Would it be too sanguine of me to expect the committee's report to advocate that solicitors should give their managing clerks larger salaries and, therefore, a more equitable share in their prosperity of recent years?

It is—or should be—common knowledge in the profession that the proportion of profit costs paid to staffs as wages and salaries is now much lower than it was prior to the late war. Whereas pre-war solicitors could count on having to pay out in wages and salaries about 35 per cent. or more of profit costs the percentage to-day is nearer 20 to 25 per cent., depending on the conscience of the solicitor concerned. Expenses generally have risen, it is true, but despite the present archaic costs system attacked by Mr. Newsome, and his claim that solicitors are being treated shabbily, most firms of solicitors, I suggest, are not doing too badly.

Is it any wonder that the depleted ranks of managing clerks have been a matter of considerable concern throughout the profession for some time when the managing clerk, the handmaid of the profession, holding, it has been said, the reputation of his principal in his hands, and in whose character, loyalty and

fidelity are the hall-marks, is almost invariably so poorly rewarded? Many are the tributes that have been paid to him recently by eminent members of the profession. A lord justice has said that managing clerks are an essential element in the team for the successful prosecution of any case before the courts. A past president of The Law Society said that he preferred to think of the legal profession as a whole, comprising judges, barristers, solicitors and managing clerks, all of whom were essential to the discharge of the functions of justice. And a High Court judge is on record as having said that one reason he had asked to be struck off the Roll of Solicitors was because he realised he would never know as much about the job as his managing clerk!

The managing clerk has to keep up appearances, and it is essential that those on whom the honour of the law depends should be in a position to maintain the requisite standards of physical, moral and intellectual integrity. It is to be hoped, therefore, that the employers' body will bring home to its members the necessity of paying adequate remuneration to their managing and other clerks, who have often been enjoined to look round for suitable recruits and to put their sons into the profession. For myself, unless I could be fairly certain that he would qualify, I would not dream of putting my son into the profession. He would be far better off, I feel, minding a machine in an arms factory, or hewing coal!

It is manifest to those connected with the law that solicitors could not accept the same volume of work and make their present incomes—or anything like them—without employing managing and other clerks, and if the latter are not properly rewarded they do not have to be over-sensitive or politically conscious to feel that they are being unduly exploited. The law clerk is an honourable man and stands by his profession, but unless there is a change of heart by many solicitors in the near future he will be forced to consider very seriously, for reasons of sheer self-preservation, not to mention self-respect (as I am doing, and this after twenty years in the profession, and with the same firm in the City) withdrawing his services entirely and finding more remunerative employment where his qualities will be better appreciated. He is usually a married man with children, and he owes it to them. Alternatively he will have to seek ways and means of bringing pressure to bear by collective action. Neither course would be welcomed by the profession, and for obvious reasons.

There is ample evidence that a large number of law clerks, especially those getting on in years, are bitterly regretting the fact that they entered the profession at all, and that in the past they have been apathetic and in no small way contributed to the lack of progress in their material conditions. As a managing clerk, thirty-five years of age, I do not propose to have similar regrets later on in life when it is too late to do anything, if there is anything I can do about it now while I am still comparatively young.

Southend-on-Sea. "SOLMANCLE."

The Law Society Yacht Club Emblem

Sir,—The propensity of lawyers to long bills is supposed to be proverbial and for that reason mariners are said to call them snipe. One must therefore regret the adoption by The Law Society Yacht Club of a shark as its emblem and badge. Why a shark? Why not a whale, an owl, or even an oyster?—anything rather than a shark!

The profession stands lower in the public estimation than it might, and the choice will give our many enemies an opportunity for a chuckle.

Southampton. P. J. R. CLIFTON.

REVIEWS

The Law of Income Tax. Twelfth Edition. By E. M. KONSTAM, Q.C. 1952. London: Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd. £4 10s. net.

The twelfth edition of Konstam's Income Tax has incorporated the consolidating Income Tax Act, 1952, in place of the pre-existing legislation, and has brought in all decisions of the courts since the last edition. Both the arrangement of the text and its detail remain similar to the previous edition. The Act itself is not printed in the book, which seems to be no drawback as so many annotated copies of the Act are available on the market.

Konstam has long been recognised as the standard work on the law of income tax, and its merits are widely known. If this review deals more with its defects than its virtues, this is only because "good wine needs no bush." The principal criticism to be made is that the book is in danger of suffering the fate which often overtakes a standard work which has gone through many editions, the danger that its original plan becomes distorted and out of balance through treating changes in the law as mere minor amendments to be inserted in the appropriate place. The time for re-writing Konstam has arrived, and if it is not done the book will find its place gradually usurped by a pretender who eventually succeeds to the Crown.

Look, for instance, at the treatment of the topic of the income of the estate of a deceased person during the course of administration. The statutory provisions as to this were first enacted in 1938, when Konstam was already of old standing, and they are re-enacted in Pt. XIX of the 1952 Act. The text of Konstam expla ning the seven long and complicated sections is much shorter than the sections themselves, and is pushed into the end of the chapter on Total Income. To discover what is a "limited interest" and what is an "absolute interest" in residue, the reader is referred to the Act. What sort of interest, for example, has a person to whom residue is bequeathed absolutely, subject to payment of an annuity thereout? The text gives no clue, however remote, to the answer to a question of this sort. "Residuary income" is not explained. Even in its brief length the text appears to be wrong, for surely a person having an absolute interest in residue does not have to treat payments to him as chargeable income for the year in which the payments are made? The above is only one example of the way in which far-reaching statutory provisions do not receive the treatment which their scope and importance warrant. It must also be said that the tendency to relegate recent decisions of the courts to footnotes, without any explanation in the text, is far too common.

May the hope be expressed that the consolidation of the Income Tax Acts will be taken as the opportunity to prepare as the next edition of Konstam a more balanced work that will retain the position held by the book for so many years. At the same time, it must be said that Konstam is as good a book as any on the market.

Executors and Administrators. Fifth Edition. By N. E. MUSTOE, M.A., LL.B., Q.C., with Executorship Accounts by J. J. WALSH, A.A.C.C.A., Lecturer in Executorship Accounts at the Kennington Commercial College. 1952. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

Students will welcome the appearance of a new edition of this book, which gives them in reasonable compass the essential features of the law affecting executors and administrators and the winding up of the estates of deceased persons generally. Besides the thoroughly practical examples of accounts which are included in the book, there are summaries of the facts and decisions in all the leading cases and the combination of case law and practical illustration contributes in no small measure to the lucidity of the book.

The inclusion in appendices of some of the more common forms is of particular value to banking and secretarial students who lack experience in a solicitor's office. In this edition a new chapter entitled "Compulsory Provision for Dependants" has been added and deals with the Inheritance (Family Provision) Act, 1938, and cases decided thereon.

The subject of annuities has come into prominence of recent years owing to the incidence of income tax and estate duty in connection therewith, and a separate chapter has, in consequence, been devoted to this topic. The abolition of legacy duty and succession duty has also caused the drastic revision of the chapter on death duties, with the result that estate duty has been able to receive more comprehensive treatment.

Besides being lucid, it is of paramount importance that a book intended for students should be accurate, and in this connection care in revision is of the utmost importance. Mention should therefore be made of the references on pp. 32 and 33 to the non-contentious probate jurisdiction of the county court in common form matters (abolished by s. 34 of the County Courts Act, 1934), and also of the incorrect statement of the exceptions to the requirement of sureties to the administrator's bond which appears on pp. 30 and 31, together with the accompanying references to the obsolete Directions by the Senior Registrar of 14th December, 1925, and the superseded rule 39 of the Principal Registry Rules. These slips should be corrected in the next edition.

Cockle's Cases and Statutes on Evidence. Eighth Edition. By LEWIS FREDERICK STURGE, of the Inner and Middle Temples, Barrister-at-Law. 1952. London: Sweet & Maxwell, Ltd. 35s. net.

Cockle is well known as a students' book which is useful as a companion volume to a text-book on the law of evidence. This edition maintains the standards of its predecessors, and quite a number of recent cases are included, such as the *Constantine* case on the burden of proof in frustration. The editor has made a special point of pruning away dead wood in the last edition, and few cases are quoted, if any, which are not alive and to the point. No errors have been noted except for a curious slip on p. 275, where the Scots case of *Browne* v. *Dunn* is said to have been taken from "6 The Reports": but the R. of the Scottish reports, "6 R. (H.L.)," stands for "Rettie," the reporter.

Guide to Income Tax. By N. E. MUSTOE, M.A., LL.B., Q.C. 1952. London: Butterworth & Co. (Publishers), Ltd. 31s. 6d. net.

This book is a guide to the Income Tax Act, 1952, which consolidated the pre-existing Income Tax Acts. It may be described as a paraphrase of the more important statutory provisions. But it falls between two stools. It is not sufficiently elementary or easy to read to be a guide to the novice, and it lacks the value which a comprehensive annotation of the Act would have to the practitioner. Had the learned author placed at the disposal of the reader his fund of accumulated experience of the working of the Income Tax Acts, it would have been a valuable book. As it is, its scope is distinctly limited.

Notes on Juvenile Court Law. Second Edition. By A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts. 1952. Chichester: The Justice of the Peace and Local Government Review. 2s. 6d. net.

These notes deal with procedure in juvenile courts in criminal cases, "care and protection" and "beyond control" proceedings (including truancy cases) and adoption applications. There is also a chapter referring to miscellaneous matters affecting juveniles, e.g., contribution orders, evidence, etc. The notes are well indexed and refer to the relevant statutes and rules. Although the booklet is not intended as a substitute for the larger text-books, it will be found useful as a pointer to the law and to the place where it is to be found. Those who are frequently in juvenile courts will save themselves time and trouble if they have this booklet.

TALKING "SHOP"

WEDNESDAY, 4TH *June*, 1952.

Familiar to the law is the process of inducing anachronism, or more simply, tinkering with time. Who was the first draftsman, I wonder, to hit upon the happy notion of moulding events to his manuscript? Thus at one stroke he liberated himself from much drudgery and his reader from toilsome repetition. As with so many great discoveries, the secret was simple enough and the sky was the limit. More sadly, the possibilities of abuse were manifold, nor have they been neglected.

Few, perhaps, will quarrel with the device in its pristine simplicity, as where the testator runs, as it were, *amok* amongst his beneficiaries. "In all or any of which events, my Will shall be construed and have effect as though the said X and Y had died in my lifetime . . ." and so on. Though homicidal in form, that is harmless enough, you may say, in content; nor is the conception (that X and Y both predeceased the testator) too difficult to grasp. True, it may appear that X figures in other clauses, and Y's children, had he died in the testator's lifetime, would have been substituted under the Wills Act, but there is nothing here that an originating summons could not mend. Besides, it would not be just to blame that pioneer for the blundering of his imitators. *Post hoc, non propter hoc.*

MONDAY, 9TH

It would be of interest to know what a debtor client should do, when, having notice of an act of bankruptcy on the part of his creditor he is being pressed to settle the debt at a reduced figure agreed upon after much negotiation. If he pays the creditor, he may be made to pay again at the instance of a trustee in bankruptcy, not yet appointed. If he refuses to pay, he invites a county court summons. If he comes into the open with an expression of his fears of approaching bankruptcy, however tactfully this may be put to his creditor, he invites him to retract from the settlement so laboriously achieved. You would suppose that there was some simple answer to this, such as paying the money into court, but to the credit of what action?

THURSDAY, 12TH

The historic draftsman (see Wednesday, 4th) who shifted time and events—not content with taking time by the forelock but positively heaving and banging it here and there after the manner of a furniture remover—would blink uncomprehending eyes at his foster-child, the modern taxing statute. "In all or any of which events the income of the said property shall be deemed to be the income of the settlor . . . The settlor shall include . . . Income shall be deemed to include . . . Property shall mean . . . Subject to the provisions of this section, for the purposes of this Chapter, this shall be deemed that and the other shall be deemed this . . . A settlement shall not be deemed to be irrevocable if the terms thereof provide . . . provided that a settlement shall not be deemed to be revocable by reason only . . ." And so on, all very plainly set out and intelligible enough if you once get the idea, and otherwise not.

Once you have learnt the rules of this game—not forgetting the much-quoted precept of Humpty-Dumpty to make the words mean what their master intended them to mean—there may be a certain fascination to some in exploring the murk within. For success in this venture it is well to place yourself in a mentally receptive condition of partial self-hypnosis, a condition in which the mind, untrammelled by reality and open to suggestion, sails freely before the metaphysical breezes of "deeming and being deemed." It is a condition such as may be experienced in that dream—said to afflict

the imaginary and impractical—wherein the dreamer floats up or down stairs by levitation, unaided and unimpeded by treads or banisters.

FRIDAY, 13TH

Most important perhaps in this craft—if it be a craft—is some quick-release gear. The sleep-walker amongst the finance statutes should condition himself to awake at the first—or at all events the second or third—jar to his native common sense, even if it means insomnia. At all costs he must contrive not to be left, as the successful plaintiff claimed to have been left in a recent action, in a state of continued hypnosis.

Allowing that this fashion of drafting has its merits and that, whether we like i or not, it has come to stay, there remains something to be said for the system, now or formerly adopted in India, of appending illustrations to the text. Not that every statute should be interleaved in technicolour, but a footnote might give at least one example of the intended working of the section. How much conjecture and unprofitable research in *Hansard* might thus be saved! And what a beneficial exercise for the Parliamentary draftsman to transmute theory into some semblance of practice!

FRIDAY, 20TH

You would suppose it to be well settled that a trustee could, or could not, and without absenting himself abroad, delegate the execution of documents relating to English real estate to an attorney. Section 23 of the Trustee Act, 1925, which deals with property outside the United Kingdom does not help; nor does s. 25 which deals with the common case of the trustee going abroad. There appears, however, to be nothing more authoritative than an *obiter dictum* of Lindley, L.J., in *Re Hetling & Merton's Contract* [1893] 3 Ch. 269. This is quoted at p. 230, vol. 1, of Emmet on Title as authority (which doubtless it is) for the statement that "if . . . a trustee wishes to appoint an attorney to execute a deed to pass the legal estate and to receive the trust money, the power must be specially given and must refer to the particular transaction."

An interesting illustration of the principle involved is to be found in *Green* v. *Whitehead* [1930] 1 Ch. 38, where the purchaser declined to accept the execution of a conveyance by the attorney of a statutory joint tenant holding upon trust for sale. The late Mr. Justice Eve held that the power of attorney constituted a complete delegation of the trust created by operation of law so that the vendors could not compel the purchaser to accept a conveyance in the form tendered. This decision was upheld on appeal.

WEEK-END REFLECTIONS

It would be interesting to know whether the Probate Registry have knowledge of the inconvenience caused by their recent change of practice. Affidavits of foreign law are no longer accepted unless the deponent can swear to have practised before the courts of the country, the law of which is the subject of the affidavit. I have one case which has been pending since last July largely on this account. And in other cases, some strange results have followed. Solicitors have had to withdraw instructions from counsel who have been making these affidavits for years and to commit their papers to other counsel, "whose worth's unknown although his height be taken." I have knowledge of one case and have heard of another, in which, pursuant to this rule, affidavits from most eminent continental lawyers have been rejected.

"ESCROW"

NOTES OF CASES

COURT OF APPEAL

RENT RESTRICTION: SUB-LETTING WITHOUT CONSENT: WAIVER OF BREACH BY ACCEPTANCE OF RENT

Hyde *v.* Pimley and Others

Evershed, M.R., Birkett and Romer, L.JJ.
21st May, 1952

Appeal from Derby County Court.

The Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, provides by Sched. I: "A court shall . . . have power to make or give an order or judgment for the recovery of possession of any dwelling-house . . . if (*a*) . . . any obligation of the tenancy . . . has been broken or not performed; . . . (*d*) the tenant without the consent of the landlord has . . . assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let." In 1941 the plaintiff let a dwelling-house to the first defendant, as secretary of a refugee committee, at 14s. 6d. per week, with an express term against assignment or sub-letting without consent. In 1947 the committee no longer required the premises, and the first defendant sub-let without consent to the second and third defendants. Rent was accepted by the plaintiff's agent from the sub-tenants with knowledge of the sub-letting. On proceedings being brought for possession, the county court judge held that the plaintiff was entitled to judgment against the first defendant, and also against the sub-tenants under para. (*d*) of the Schedule, but not under para. (*a*). The sub-tenants appealed.

EVERSHED, M.R., delivering the judgment of the court, said that the court below had held that once there had been a sub-letting of the whole premises without consent, para. (*d*) came into operation irrespective of any subsequent waiver. The authorities, however, showed that the paragraph was not to be construed strictly and literally. In *Oak Property, Ltd.* v. *Chapman* [1947] K.B. 886 it was held that the paragraph was displaced if the tenant recovered possession of part of the house, and *Regional Properties, Ltd.* v. *Frankenschwerth* [1951] 1 K.B. 631; 95 SOL. J. 106 showed that the landlord's consent might be implied as well as expressed. It would be fair to hold that para. (*d*) had no operation if the landlord's consent, express or implied, was given before proceedings for possession were brought. The plaintiff thus failed under both paragraphs. Appeal allowed.

APPEARANCES: *R. E. Megarry* (*G. A. Hathway*, for *Flint, Bishop & Barnett*, Derby); *C. Lea* (*H. J. Garrard* with him) (*Hawley and Rodgers*, Loughborough).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

INCOME TAX: ANNUAL PAYMENT TO CHARITY: DEDUCTION

Inland Revenue Commissioners *v.* City of London

Evershed, M.R., Birkett and Romer, L.JJ. 28th May, 1952

Appeal from Donovan, J.

Under the Epping Forest Act, 1878, Epping Forest is managed by the City of London as a place of recreation and enjoyment for the public. The Act provides that the Corporation of London shall from time to time contribute such moneys as are necessary for the upkeep of the forest. For many years the income from timber cuttings, loppings and fees had fallen short of the requirements, and the corporation paid each year to the body of conservators a sum required to make up the deficit; these sums had been paid out of the properties of the corporation, both real property and investments. In the income-tax year 1948–49 the annual contribution of the corporation amounted to £16,006 3s. 4d. When making the payment, the corporation deducted £7,202 15s. 6d. in respect of income tax and paid the conservators £8,803 7s. 10d. net. The corporation claimed to be entitled to the deduction because the management of Epping Forest was a charitable purpose and the conservators were exempt from income tax and could accordingly reclaim the amount deducted; the corporation based its claim on the Income Tax Act, 1918, Case III of Schedule D, and rule 19 (1) of the All Schedules Rules. The Special Commissioners allowed the deduction, but Donovan, J., reversed their decision. For the purposes of the appeal it was agreed that the conservators of Epping Forest and the city corporation were two distinct corporate bodies and that the management of Epping Forest by the conservators was a charitable purpose.

EVERSHED, M.R., delivering the judgment of the court, said that the question was whether the payment by the corporation constituted, as the Crown contended, a spending or outlay on the part of the corporation of the corporation's income and in the hands of the conservators trading receipts, or whether the discharge of its statutory obligation on the part of the corporation constituted, in effect, a transfer of a slice of the income of the corporation's cash to the income of the conservators, in which case the payment appeared to correspond to the interest and dividend received by the conservators from the capital of the Epping Forest Fund in respect of which income tax was presumably deducted at the source and recovered by the conservators. The vital point was that the conservators were not carrying on a trade but the enterprise conducted by them was a charitable enterprise. The Special Commissioners were right in the decision which they had reached and the appeal had to be allowed. Leave to appeal to the House of Lords.

APPEARANCES: *Millard Tucker*, Q.C., and *N. E. Mustoe*, Q.C. (*Comptroller and City Solicitor*); *Cyril King*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: CHARITABLE BEQUEST: FOR SUCH USE PREFERABLY IN CONNECTION WITH AUSTRALIA AS THE NATIONAL TRUST MAY DECIDE: CODICIL REVOKING GIFT: WHETHER GIFT TO ISSUE AND POWER OF APPOINTMENT REVOKED

***In re* Spensley's Will Trusts; Barclays Bank, Ltd. *v.* Staughton**

Vaisey, J. 14th May, 1952

Adjourned summons.

By a will made in 1932, the testator directed his trustees after the death of a life tenant to allow his niece *X* the use of a house for life, and after her death he gave it to such child or children as she might appoint, with remainder over to her first or other sons in case she failed to exercise the power of appointment, and if no child of the niece acquired a vested interest, with further remainders over, the testator further bequeathed the furniture, pictures and other contents of the house to *X* absolutely. The testator then disposed of his country house which, in the events which happened, was to be held " for such . . . uses preferably for some purpose in connection with Australia as the . . . National Trust and my sister *Y* . . . if then alive may jointly decide or if [*Y*] be not then alive as the said National Trust may decide." By a codicil made in 1938, the testator revoked " all provisions made in my . . . will for my niece [*X*] and I direct that my said will is to be read as if the name of my said niece [*X*] did not occur therein." The testator died in 1938; *X* was married and had children. The court was asked to determine (1) whether the gift of the testator's country house was a valid charitable gift, and (2) whether the effect of the codicil was to revoke the trusts in the will for the benefit of the children of *X* and the power of appointment.

VAISEY, J., said that, applying the principle explained by Jenkins, J., in *In re Flinn* [1948] 1 Ch. 241, he was bound to look at this case as if the person who had the effective power of disposition of the country house was the National Trust. That body was admittedly a charity; the words " preferably for some purpose in connection with Australia " were no more than a mere predilection. On the whole, the National Trust, by virtue not only of the property, but by virtue of the power which they also had, were given such control over this fund as enabled them to dedicate it to purposes either the same or *in pari materia* with their own purposes. As regards the second question, it was clear that the personal beneficial interest of *X* under the will was revoked by the codicil; there were a good many indications in the will which seemed to indicate that the revocation was to be a revocation of all the benefits given to *X* and her issue, but there was undoubtedly a strong and rigid rule that a codicil ought not to be construed as revoking a will except in so far as it did so necessarily: that was, by express terms or inevitable inference. Applying the rules laid down in *In re Wray* [1951] 1 Ch. 425, he (the learned judge) would hold that the revocation was confined to the beneficial interest of *X* personally, leaving the provisions in favour of her issue unaffected. The power of appointment was a provision in *X's* favour and could be properly said to have been made for her benefit. It ceased to be exercisable in consequence of the revocation clause in the codicil, and the gift over in default of appointment took effect.

APPEARANCES: *Hillaby; Pennycuick*, Q.C., and *E. B. Stamp; Bradburn; D. S. Chetwood* (*Radcliffes & Co.*); *S. Pascoe Hayward*, Q.C., and *N. Warren*; *J. A. R. Finlay* (*Leman, Harrison and Flegg*); *Denys B. Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

SETTLEMENT: SPECIAL POWER OF APPOINTMENT: DOUBLE POSSIBILITY RULE: DATE OF CREATION OF LIMITATION

***In re* Leigh's Marriage Settlement; Rollo *v.* Leigh**

Vaisey, J. 16th May, 1952

Adjourned summons.

In an ante-nuptial settlement made in 1913, it was provided that the intended husband should have power by deed or will to appoint all or any children or remoter issue to the settled property, " but so that no such appointment shall infringe the rule against limiting an estate to an unborn person for life with remainder to the child of such person." The issue of the marriage was one son and two daughters. By a deed of appointment made in 1946 the husband appointed his son to part of the settled property for life, with remainder on trust for sale and on trust for all or any children of the son born before the expiration of twenty-one years less one day from the death of the husband.

The Law of Property Act, 1925, s. 161 (1), provides that the rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest to the unborn child or other issue of an unborn person is abolished, and, in subs. (2), that the section only applies to limitations or trusts created by an instrument coming into operation after the commencement of the Act.

VAISEY, J., held that the limitation set out in the deed of appointment of 1946 was " created " by that deed, within the meaning of s. 161 (2), and not by the settlement of 1913 or by that settlement in conjunction with the deed, and that, consequently, the trusts declared by the power of appointment were valid and effectual. For many purposes the creation of a limitation or a trust had to be referred back to the originating instrument, and one could not for all purposes confine the operation of creation to the later instrument. In his (the learned judge's) opinion, however, in the present case, the instrument by which the limitations in question were created was the deed of 1946, which came into operation after the operation of the Act of 1925. The object of the clause in the settlement of 1913, that " no such appointment shall infringe the rule against limiting an estate to an unborn person for life with remainder to the child of such person," was merely to give a warning to the draftsman of the subsequent deed of appointment not to fall into the well known pit labelled *Whitby* v. *Mitchell* (1890), 44 Ch. D. 85, and thus if, when the relevant time came (which was 1946 and not 1913), the rule had gone, the prohibition had no operation because there was no rule left to be infringed. *In re Batty* [1952] 1 Ch. 280; p. 120, *ante*, distinguished.

APPEARANCES: *T. A. C. Burgess; Geoffrey Cross*, Q.C., and *J. L. Arnold; Charles Russell*, Q.C., and *Wilfrid Hunt* (*Withers and Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

MARKETS: STALLAGE: REASONABLENESS OF CHARGES

A.-G. *v.* Colchester Corporation

Danckwerts, J. 16th June, 1952

Action.

The defendants were the owners of an ancient market which existed already at the date of a charter granted in 1189 and was confirmed in many later charters; the defendants likewise owned the land where the market was held. The charges for stallage had never been regulated by charter, custom, statute or otherwise. The defendants operated a scale of charges which varied according to the frontage occupied by the trader and differentiated between borough residents, residents within ten miles and others. The action was brought on the relation of the general secretary of the National Market Traders' Federation, and the plaintiff's case was that the defendants were only entitled to charge reasonable prices for stallage, but were, in fact, charging unreasonable and excessive stallage. Evidence was given of the charges for stallage in other markets, showing that some charges at the defendants' market were much higher than the charges anywhere else.

DANCKWERTS, J., said that the right to stallage payments was different from the right to take ordinary tolls as it did not depend on royal grant or prescription, but on ownership of the soil. If a trader erected a stall without previous agreement with the owner of the soil, the latter might sue in *assumpsit* and recover a reasonable sum. The owner was not under an obligation to provide stalls; his duty at common law was to provide a space in which buyers and sellers could meet; conversely, he owed a duty not to prevent the public from exercising their common-law rights by covering the whole space with stalls, but there was no evidence that the defendants had done that in the present case. There must be a distinction between markets—such as the defendants'—where the charge was settled by a voluntary bargain, and those where the charge was limited by custom or statute or order. The existence of the requirement of a reasonable limit in the latter class and the language of the Statute of Westminster I (1275; 3 Edw. 1, c. 31) might well lead to misleading inferences. But where, as in the first class, the trader was under no obligation to incur the charges, and only did so for his greater convenience by a bargain with the owner of the soil, the charges made by the owner were not open to attack. Further, the relator had not discharged the onus of proving that the charges were, in fact, unreasonable.

APPEARANCES: *J. P. Hunter-Brown* (*Beveridge & Co.*, for *Neal, Scorah, Siddons & Co.*, Sheffield); *Sir Andrew Clark*, Q.C., and *John Arnold* (*Sharpe, Pritchard & Co.*, for *Norman Catchpole*, Town Clerk, Colchester).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

PUBLIC HEALTH: RIGHT OF APPEAL TO QUARTER SESSIONS: "PERSON AGGRIEVED"

R. *v.* Nottingham Quarter Sessions; *ex parte* Harlow

Lord Goddard, C.J., Jones and Parker, JJ.
23rd May, 1952

Application for certiorari.

The Public Health Act, 1936, provides by s. 301: " . . . when a person aggrieved by any order, determination or other decision of a court of summary jurisdiction under this Act is not by any other enactment authorised to appeal to a court of quarter sessions, he may appeal to such a court . . ." The applicant was the agent of the owners of a house in Nottingham. The city council, pursuant to its powers under s. 75 of the Act, required the applicant by notice to provide a dustbin. The applicant appealed to petty sessions, which quashed the notice, making no order as to costs. Quarter sessions, on appeal by the council, allowed the appeal and restored the notice. The applicant then moved the court for an order of certiorari, on the ground that quarter sessions had no jurisdiction to entertain the appeal, as (1) the council was not a " person " within s. 301, and (2) in any event the council was not " a person aggrieved," and so had no right of appeal.

PARKER, J., delivering the judgment of the court, said that the first question was concluded in favour of the council by *R.* v. *Surrey Quarter Sessions; ex parte Lilley* [1951] 2 K.B. 749; 95 SOL. J. 697. The second question was more difficult, as the justices merely allowed the appeal without awarding costs against the council. The Act of 1936 imposed numerous duties on local authorities; they had to make a number of determinations from which the public could appeal to petty sessions, with a further appeal to quarter sessions under s. 301. *Prima facie*, a local authority which became involved, unsuccessfully, in proceedings of that sort would be called " a person aggrieved." In the present case, under the terms of the Act, when petty sessions quashed the notice requiring the applicant to provide a dustbin, the council would have had to fulfil their duties in some other way, either by providing a dustbin themselves, or by serving a notice on the occupier, with the risk that it would be quashed and that they would have to pay costs; in other words, they were left with a legal burden as a result of the order of petty sessions. In those circumstances, the council must be held to be " a person aggrieved." It had been contended for the applicant that the decisions in the *Surrey* case, *supra*, and *R.* v. *London Quarter Sessions; ex parte Westminster Corporation* [1951] 2 K.B. 508, supported his case; but those cases were distinguishable, as they cast no legal burden on the local authority. On the other hand, the court's view was supported by *Ex parte Sidebotham* (1880), 14 Ch. D. 458. Application refused.

APPEARANCES: *R. Elwes*, Q.C., and *R. D. Lymbery* (*Peacock and Goddard*, for *Browne, Jacobson & Hallam*, Nottingham); *A. P. Marshall*, Q.C., and *Jackson-Lipkin* (for *Cotes-Preedy*) (*Sharpe, Pritchard & Co.*, for *T. J. Owen*, Town Clerk, Nottingham).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PRACTICE: DEFECTIVE WRIT: SUMMONS TO SET ASIDE: DELIVERY OF STATEMENT OF CLAIM BEFORE HEARING OF SUMMONS

Groundsell *v.* Cuthell and Another

Ormerod, J. 23rd May, 1952

Summons adjourned into open court.

After a death on 12th February, 1951, as the result of an accident, a writ was issued on 22nd January, 1952, claiming damages for negligence under the Law Reform (Miscellaneous Provisions) Act, 1934, and the Fatal Accidents Acts, 1846 to 1908. The second defendant took out a summons to set aside service, which was effected on 23rd April, on the ground that the indorsement did not properly set out the cause of action. Between the issue and the hearing of the summons the plaintiff delivered a statement of claim which sufficiently stated the cause of action. The master dismissed the summons. On appeal to the judge in chambers, it was contended for the second defendant that the decision ought to be made on the facts existing at the time of the issue of the summons; and that, as the time for the issue of the writ had expired, an order refusing to set aside service could only be made by the exercise of the court's discretion, which ought not to be exercised, as to do so might deprive the defendants of a defence. It was contended for the plaintiff that the defect in the writ had been made good by the delivery of the statement of claim (*Hill* v. *Luton Corporation* [1951] 2 K.B. 387; 95 SOL. J. 301); that the material facts were those existing at the date of the hearing, and that the delivery of the statement of claim was a matter of right, and called for no exercise of the court's discretion.

ORMEROD, J., said that *Hill* v. *Luton Corporation*, *supra*, showed that defects in a writ were cured by the issue at the same time of a proper statement of claim, but did not cover the case when an application to set aside a defective writ was made before delivery of a statement of claim. The only question was whether the facts to be taken into account were those at the date of the issue of the summons or those at the date of the hearing. He considered the latter to be the correct date; by that time, the statement of claim had been delivered as a matter of right, and the service of the writ should not be set aside. The point as to discretion did not therefore arise; but it could not be said that the defendants would be deprived of any defence, as if service was set aside the writ could be re-served together with the statement of claim, there being still some months available for service. Appeal dismissed.

APPEARANCES: *J. C. Leonard* (*Peacock & Goddard*, for *Browne, Jacobson & Hallam*, Nottingham); *J. R. Cumming-Bruce* (*Redpath, Marshall & Holdsworth*, for *J. Steele Carr & Co.*, Sheffield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

FIREARM: DETACHABLE TELESCOPIC SIGHT: WHETHER SEPARATE CERTIFICATE NECESSARY

Watson *v.* Herman

Lord Goddard, C.J., Devlin and Gorman, JJ.
23rd May, 1952

Case stated by York justices.

The appellant was charged with and convicted of an offence under s. 1 of the Firearms Act, 1937, in that he had in his possession a component part of a firearm otherwise than as authorised by a firearm certificate. Section 32 (1) of the Act provides: " Firearm means any lethal barrelled weapon of any description . . . and includes . . . any component part of any such lethal . . . weapon . . . and any accessory . . . designed . . . to diminish the noise or flash . . ." The appellant possessed a ·22 rifle fitted with a detachable telescopic sight which he had made and fitted himself. He had a firearm certificate for the rifle. The appellant contended that the sight was not a " component part," but an accessory which could be used or not as required. The justices accepted the submission of the prosecutor that the sight was a " component part," and so

required a certificate, as it enhanced the lethal qualities of the rifle.

LORD GODDARD, C.J., said that there was no justification for the view taken below. It might be that component parts which were not made up into a rifle needed a certificate, but the only accessory which required separate mention was one designed to diminish the noise or flash. No separate certificate was needed for every component part in addition to the certificate for the rifle; the certificate must include the component parts. An accessory, such as the appellant's, did not require to be specially mentioned or to have a separate certificate.

DEVLIN and GORMAN, JJ., agreed. Appeal allowed.

APPEARANCES: *E. Ould* (*C. Grobel, Son & Co.*, for *G. F. Mitchell*, York); *E. H. P. Wrightson* (*Sharpe, Pritchard & Co.*, for *T. C. Benfield*, York).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: WIFE REMAINING IN HOUSE AFTER DESERTION BY HUSBAND: COLLUSIVE SALE OF HOUSE BY HUSBAND

Ferris *v.* Weaven

Jones, J. 23rd May, 1952

Action.

A husband who lived with his wife and child in a house which was subject to a mortgage deserted his wife in 1941, and when sent a demand for rates wrote " . . . will send money when I have some . . . I will carry on paying on the house providing you do not annoy me . . . don't you forget you have my house and furniture. You are all right as you are . . ." Until 1951 the husband continued to pay the rates and mortgage instalments. In that year, without informing the wife, he sold the house to the plaintiff, his brother-in-law, for £30, which was not paid, and the husband continued to pay the rates and mortgage instalments. On the plaintiff bringing an action against the wife for possession and mesne profits, he admitted in evidence that he had bought the house to oblige the husband, who thought that he could not get the wife out of the house otherwise.

JONES, J., after referring to *Thompson* v. *Earthy* [1951] 2 K.B. 596; 95 SOL. J. 531; *Errington* v. *Errington* [1952] 1 K.B. 290; 96 SOL. J. 119, and *Foster* v. *Robinson* [1951] 1 K.B. 149; 94 SOL. J. 474, said that *Bendall* v. *McWhirter* [1952] 1 T.L.R. 1332; 96 SOL. J. 344, showed that the wife was a licensee, with a contractual right to remain in the house, by reason of the arrangement with the husband; her right was binding in equity except against a purchaser for value without notice. The arrangement between the husband and the plaintiff was made in order to defeat the rights of the wife, and the action accordingly failed. Action dismissed.

APPEARANCES: *L. Jellinek* (*Champion & Co.*, for *Turberville Smith & Co.*, Uxbridge); *B. Braithwaite* (*Speechly, Mumford and Craig*, for *Woodbridge & Sons*, Uxbridge).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SALE OF GOODS: MOTOR CAR OBTAINED BY FRAUD: SALE TO INNOCENT PURCHASER

Du Jardin *v.* Beadman Brothers, Ltd.

Sellers, J. 28th May, 1952

Action.

One G called at the defendants' garage in a Hillman car, and offered to buy a Standard car, tendering a cheque for £710, which was refused. It was then agreed that G, in order to show the car to a prospective buyer, should pay £10 in cash, give a cheque for £700, and leave the Hillman car as security for the cheque. G accordingly was allowed to drive the Standard car away, and was given the registration book and a receipt; shortly afterwards he, or a confederate, returned and secretly removed the Hillman car. G then sold the Standard car to the plaintiff, who bought in good faith for value. G's cheque being worthless, he was charged with and convicted of obtaining the Standard car by false pretences. The police took away the Standard car from the plaintiff, and returned it to the defendants. The plaintiff claimed the return of the car or its value and damages for detention, or alternatively for conversion.

SELLERS, J., said that the property in the car did not pass to G, but the defendants intended it to pass when the cheque was met. His view, subject to the authorities, was that G obtained possession of the car with the consent of the defendants; and the plaintiff, having bought in good faith and without notice of defect of title, had made out a good title under s. 9 of the Factors Act, 1889. If the title had passed to G, the case would have been one of false pretences; the defendants' contract would have been voidable and the plaintiff would have obtained a good title. The defendants had contended that as possession only, and not title was obtained by G, it was a case of larceny by a trick, so that G had no title to transfer; that the Factors Act and s. 25 (2) of the Sale of Goods Act, 1893, did not apply; and that the car could not be said to have been obtained with the consent of the owner (*Oppenheimer* v. *Frazer and Wyatt* [1907] 2 K.B. 50). But in *Folkes* v. *King* [1923] 1 K.B. 282 it was held that larceny by a trick in such circumstances as the present was no defence against the Factors Act, and the same view was held in *Pearson* v. *Rose and Young, Ltd.* [1951] 1 K.B. 275. The real question to be ascertained was whether possession was obtained with the consent of the owner. It was plain that in the present case the defendants had consented to G having possession of the car. Judgment for the plaintiff.

APPEARANCES: *D. Weitzman*, Q.C., and *L. Halpern* (*S. Kalman and Co.*); *J. Wilmers* (*Seaton Taylor & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PRACTICE NOTE

ARBITRATION: JURISDICTION TO HEAR APPLICATIONS FOR EXTENSION OF TIME

Hilbery and Devlin, JJ. 30th May, 1952

At the hearing of a motion for an extension of time within which to give notice of an application for a reference to arbitration under s. 27 of the Arbitration Act, 1950, the court held that such an application must be made to the Queen's Bench Divisional Court.

HILBERY, J., said that s. 27 reproduced the provisions of s. 16 (6) of the Arbitration Act, 1934, which enabled the court to extend time, the difference between the two sections being that in 1934 it was " the court," and in 1950 it was " the High Court " to which such applications had to be made. It appeared from Practice Note in [1943] W.N. 74 that the Court of Appeal had laid down that applications under s. 16 (6) of the Act of 1934 must be made to the Divisional Court, not to a master or judge in chambers, as the subsection referred to " the court," not " the court or a judge." The mere addition of the word " High " in the Act of 1950 made no substantial difference, and accordingly applications under s. 27 of the Act of 1950 must be made to the Divisional Court. In the supplement to vol. 2 of the " Annual Practice, 1951," at p. 64, it was stated that an application under s. 27 was to a single judge in court. No authority was given for that statement.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PUBLIC ASSISTANCE: UNJUSTIFIABLE REFUSAL OF WIFE TO LIVE WITH HUSBAND: LIABILITY OF HUSBAND TO MAINTAIN WIFE

National Assistance Board *v.* Wilkinson

Lord Goddard, C.J., Devlin and Gorman, JJ. 10th June, 1952

Case stated by Durham justices.

The National Assistance Act, 1948, provides by s. 42 (1): " For the purposes of this Act (*a*) a man shall be liable to maintain his wife and his children and (*b*) a woman shall be liable to maintain her husband and her children." By s. 43 (1): " where assistance is given or applied for by reference to the requirements of any person . . . the Board . . . may make a complaint to the court against any other person who for the purposes of this Act is liable to maintain the person assisted." The wife of a husband, who had the means to maintain her, refused to live with him in the matrimonial home which he had prepared for her reception. She received assistance from the Board, which took proceedings against the husband to recover the sums so given. The justices held that the wife had no justification for refusing to live with the husband, and dismissed the summonses. The Board appealed.

LORD GODDARD, C.J., said that, throughout all the poor law legislation down to the Act of 1948, and at common law, there had never been any liability on a husband to maintain an adulterous wife, or one who refused unjustifiably to live with him in the matrimonial home (*Culley* v. *Charman* (1881), 7 Q.B.D. 89; *Jones* v. *Guardians of Newtown* [1920] 3 K.B. 381). It was said that the Act of 1948 had altered the law by reason of the words " for the purposes of this Act "; but it was to be

presumed that the Legislature did not intend to make a substantial alteration in the law beyond what was expressly declared (*Minet* v. *Leman* (1855), 20 Beav. 269) and it was impossible to suppose that Parliament intended any such effect. If certain observations of the Divisional Court of the Probate Division in *Aldritt* v. *Aldritt* (1951, unreported) might be regarded as indicating a contrary opinion, they were made *obiter* and could not be taken as authority for the proposition that the Board was entitled to recover from the husband under any circumstances.

DEVLIN and GORMAN, JJ., agreed. Appeal dismissed.

APPEARANCES: *J. P. Ashworth* (*Solicitor, Ministry of National Insurance and National Assistance Board*); *Barry Sheen* (*Field, Roscoe & Co.*, for *Dowling & Hewitt*, Bishop Auckland).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:

City of London (Guild Churches) Bill [H.C.] [17th June.
Scottish Mutual Assurance Society Bill [H.C.] [17th June.
Town Development Bill [H.C.] [17th June.

Read Second Time:

Magistrates' Courts Bill [H.L.] [18th June.

Read Third Time:

Family Allowances and National Insurance Bill [H.C.] [17th June.

B. DEBATES

On the second reading of the **Magistrates' Courts Bill,** the LORD CHANCELLOR said the Bill was a consolidation measure. LORD MERTHYR said the Bill would be a great help and relief to all those who practised in the courts and to magistrates and their clerks. Up to now they had been dependent upon a series of Acts dating back for more than a century. He expressed gratitude to Lord Llewellin and his committee which had produced the Bill. One point which troubled him, however, was that the Bill contained no reference to the procedure under the Justices of the Peace Act, 1360, which enabled a man to be ordered to find sureties for his good behaviour even though he had committed no offence. The Act was still used and he was anxious to know why it was not mentioned.

He also noticed that in the Repeal Schedule large sections of well-known Acts were repealed, whereas some very small sections remained. This took away most of the value of the repeal. The parts remaining would have to be known and studied by those who worked in the courts.

LORD LLEWELLIN, speaking as Chairman of the Departmental Committee which had produced the Bill, said the committee was only consolidating such parts of the Statute Law as concerned the procedure of magistrates' courts. They had therefore had to leave out of the Repeal Schedule anything appertaining to courts of assize, quarter sessions or courts which tried indictable offences. The LORD CHANCELLOR said he could not recall off-hand whether there was any further consolidation of the criminal law in contemplation. [18th June.

C. QUESTIONS

VISCOUNT BUCKMASTER asked whether, in view of the acute housing shortage and the fact that existing legislation made it economically impossible for many landlords to keep their property in repair, the Government would at an early date undertake a revision of the Rent Restrictions Acts. Was the Government aware of the danger, if the pound fell further, of the cost becoming even more prohibitive and of relief becoming impossible? LORD LLOYD said the Government had under consideration the question of a revision of the Rent Acts, but they were at present unable to give any undertaking as to when legislation would be introduced. [17th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:

Pensions (Increase) Bill [H.C.] [16th June.
To authorise certain increases in the case of pensions to which the Pensions (Increase) Acts, 1944 and 1947, apply, and of certain other pensions.

Read Second Time:

Canterbury and District Water Bill [H.L.] [16th June.
Manchester Ship Canal Bill [H.L.] [16th June.
Marine and Aviation Insurance (War Risks) Bill [H.C.] [16th June.
Nottingham Corporation Bill [H.L.] [16th June.
Nottinghamshire and Derbyshire Traction Bill [H.L.] [16th June.

Read Third Time:

Blackpool Corporation Bill [H.L.] [16th June.
Brighton Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [19th June.
Derby Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [19th June.
Pier and Harbour Provisional Order (Brighton) Bill [H.C.] [19th June.
Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [19th June.
Pier and Harbour Provisional Order (Herne Bay) Bill [H.C.] [20th June.
Pier and Harbour Provisional Order (King's Lynn) Bill [H.C.] [20th June.
Pier and Harbour Provisional Order (Minehead) Bill [H.C.] [20th June.
Pier and Harbour Provisional Order (Seaham Harbour) Bill [H.C.] [19th June.
Portsmouth Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [19th June.

In Committee:

Agriculture (Ploughing Grants) Bill [H.C.] [16th June.

B. DEBATES

On the report stage of the **Finance Bill** the SOLICITOR-GENERAL introduced a new clause exempting from stamp duty the transfer of property from a local authority to a water board, and also exempting from stamp duty the acquisition by the water board of the property of a private water company or other privately owned water undertaking. Furthermore, the clause not only applied to water boards, but made similar provision in respect of property transferred from a local authority to a joint sewerage board. Mr. G. R. MITCHISON inquired whether the clause applied to joint burial boards. SIR GEOFFREY HUTCHINSON said the new clause would be welcomed by all local authorities and undertakings affected by it.

The SOLICITOR-GENERAL said that if the burial board happened to be constituted by order under s. 6 of the Public Health Act, 1936, then the board would gain the advantage of this exemption from stamp duty. [17th June.

C. QUESTIONS

HACKNEY CARRIAGE LAW (REPORT)

Sir DAVID MAXWELL FYFE declined to make available to members the Report of the Working Party on Hackney Carriage Law set up in 1950. The Party consisted of departmental officials and technical experts, and it was not the practice to disclose the advice given by such bodies on matters which might involve questions of policy. [13th June.

MARRIAGE CERTIFICATES (ADOPTED CHILDREN)

Asked whether he would consider amending the regulations which made it necessary for the word "adopted" to be put on the marriage certificate of an adopted child, in view of the distress which this practice caused to both parents and child concerned, where the latter had been brought up as their own child, the HOME SECRETARY said he was arranging for his department to discuss with the Registrar-General, who was responsible for the form of marriage certificates, the suggestion that the present practice should be changed. [16th June.

GOVERNMENT OFFICIALS (POWERS OF ENTRY)

Mr. R. A. BUTLER stated that the total number of officials authorised to carry out inspections and investigations in private houses and premises without a search warrant was, on 1st June, 1952, 6,128. This figure included officials from the Ministry of Civil Aviation, the Ministry of Health, the Home Office, the Inland Revenue, the War Damage Commission, and the Central Land Board. An urgent investigation was being undertaken into this question. [17th June.

HOUSING (CARAVAN SITES)

The MINISTER OF LOCAL GOVERNMENT AND HOUSING said he did not think a conference with all interested in the provision of licensed caravan sites would prove very useful at the present stage. He did not regard caravans as suitable substitutes for houses. There was no reply to a question by Mr. SPARKS as to whether the Minister would take steps to bring within existing legislation the tenancies of caravans which, he understood, were at present outside legislative protection. [17th June.

PROPERTY OWNERS (ADDRESSES)

Lieutenant-Colonel LIPTON asked the Minister what steps he would take to ensure that the correct names and addresses of property owners were recorded with local rating authorities? Was he aware of the difficulties met with by many boroughs when trying to ensure compliance with sanitary notices when they found that owners of property were working under false names with accommodation addresses and could not be traced. Mr. MACMILLAN said he did not think any steps by him were called for. Sanitary notices and similar notices could, by law, be addressed simply to the owner of the property. [17th June.

TENANTS (PROTECTION)

Mr. JANNER asked whether the Minister was aware that the Court of Appeal had upheld the judgment of the Divisional Court in the case of *R.* v. *St. Helens Rent Tribunal; ex parte Pickavance* [96 SOL. J. 376], and if he would introduce legislation to protect tenants who were affected by this decision. When s. 11 of the Act of 1949 had been passed everybody had thought that protection had been granted. Mr. MACMILLAN said he was aware of the Court of Appeal decision and he had the matter under consideration. The matter was, however, subject to further appeal. [17th June.

RENT RESTRICTION (VOLUNTARY PAYMENTS)

Mr. JANNER asked the Minister whether his attention had been called to the growing practice of some landlords of properties controlled by the Rent Restrictions Acts of requesting their tenants to make some voluntary contribution in addition to the controlled rent; and whether, in view of the fact that tenants might think that if they did not respond they might be penalised or black-listed in some way, he would take steps to ensure that the intention of the Rent Restrictions Acts was not undermined by the development of such practices. Would he exercise his powers to instruct local authorities to make clear what the rights of tenants really were and, by that method, avoid these serious and pernicious practices? Mr. HAROLD MACMILLAN said he was aware of the practice but very few complaints had reached him. He had no power to penalise or black-list anybody, but the tenants had their legal means of redress. [17th June.

ADVANCE RENT DEMANDS

Mr. HAROLD MACMILLAN said his attention had been called to some cases of landlords aggregating rent over a period of years and demanding payment of such sum in advance as a condition of letting accommodation to tenants, and he was considering whether anything ought to or could be done to stop the practice. [17th June.

FURNITURE AND FITTINGS (PREMIUMS)

Mr. SPARKS asked the Minister whether he was aware of the growing practice whereby one or two bits of old junk were put in a couple of rooms, a fantastic price was charged for these "fixtures and fittings" as a condition of letting accommodation to prospective tenants, and, as soon as the new tenant had taken possession, the landlord began to make himself unbearable by quarrels until he regained possession, when he repeated the process again and again. Mr. MACMILLAN said the practice was illegal. Mr. GIBSON said it was not good enough to say the practice was illegal. Could not the Minister do anything to encourage the prosecution of people who carried out this illegal action? [17th June.

ESTATE AGENTS (LICENCES)

Mr. HAROLD MACMILLAN said the Government was trying to deal with the question of unqualified estate agents, and he would bear in mind a suggestion by Mr. RUSSELL that he should consult with the local authorities with a view to imposing a system of licensing on persons and firms engaged as agents in the letting of furnished and unfurnished flats, houses and lodgings. [17th June.

LAND ACQUISITION (NOTIFICATIONS)

Mr. MACMILLAN stated that the procedure for the notification of landowners of a proposal to acquire their land for housing purposes was laid down by the Acquisition of Land (Authorisation Procedure) Act, 1946, and the actual form of notice to owners, lessees and occupiers was prescribed in the Compulsory Purchase of Land Regulations, 1949 (S.I. 1949 No. 507). [17th June.

AGRICULTURE (DISPOSSESSIONS)

Sir THOMAS DUGDALE stated that since 1st March, 1948, when Pt. II of the Agriculture Act, 1947, came into operation, 168 farmers had been dispossessed for bad husbandry, and ten certificates had been issued under s. 16 for the dispossession of owners on grounds of bad estate management. [19th June.

STATUTORY INSTRUMENTS

British South American Airways Corporation (Dissolution) Order, 1952. (S.I. 1952 No. 1138.)

Draft **Central Midwives Board** for Scotland (Reconstitution) Order, 1952. 5d.

Control of Textile Bags (Revocation) Order, 1952. (S.I. 1952 No. 1155.)

Exemptions (Potato Lifting) (Scotland) Regulations, 1952. (S.I. 1952 No. 1147 (S. 52).) 5d.

Gloucester and Cheltenham Water Order, 1952. (S.I. 1952 No. 1137.)

Guisborough Water Order, 1952. (S.I. 1952 No. 1127.) 5d.

Hill Cattle (England and Wales) Amendment Scheme, 1952. (S.I. 1952 No. 1152.)

Hire-Purchase and Credit Sale Agreements (Control) (Amendment No. 2) Order, 1952. (S.I. 1952 No. 1160.)

Hollow-Ware Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 1161.) 8d.

Import Duties (Exemptions) (No. 2) Order, 1952. (S.I. 1952 No. 1154.)

National Health Service (Remission of Charges for Dentures) (Scotland) Order, 1952. (S.I. 1952 No. 1029 (S. 48).)

Draft National Health Service (Scotland) (Superannuation) Amendment Regulations, 1952. 6d.

Stopping up of Highways (Lancashire) (No. 5) Order, 1952. (S.I. 1952 No. 1153.)

Stopping up of Highways (Worcestershire) (No. 4) Order, 1952. (S.I. 1952 No. 1144.)

Sugar (Prices) (Amendment No. 3) Order, 1952. (S.I. 1952 No. 1148.) 6d.

Sugar Industry (Provision for Research and Education in the growing of Sugar Beet in Great Britain) Order, 1952. (S.I. 1952 No. 1132.) 5d.

Superannuation (Local Government and Northern Ireland) Interchange (Scotland) Rules, 1952. (S.I. 1952 No. 1168 (S.54).) 8d.

Transferred Undertakings (Pensions of Employees) (No. 1) Regulations, 1952. (S.I. 1952 No. 1159.) 5d.

Usk River Board Constitution Order, 1952. (S.I. 1952 No. 1143.)

Water Charging Orders (Annuity) (Scotland) Regulations, 1952. (S.I. 1952 No. 1145 (S. 51).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Appointment of New Trustees of Unincorporated Club

Q. I act for the present trustees of a club who desire to purchase the freehold of the club premises. The leasehold interest was purchased by the then trustees in 1911 and they are either dead or cannot be traced long since. When drawing the conveyance of the reversion, I should like to insert the usual declaration of merger, but I take it that I cannot do so unless the leasehold is vested in the present trustees. How is the ownership of the leasehold to be brought up to date and vested in the present trustees? The rule book gives no guidance and the club secretary knows nothing of any articles which may have been drawn up to govern the organisation of the club on its foundation some sixty years ago. In any event, I imagine that no rules of a club like this could legally operate automatically to vest the club's real property in the trustees for the time being. I believe that property does pass in that way in the case of societies governed by the Friendly Societies Act.

If there is no such automatic transfer from trustees to their successors, then it would appear that the only way to cause the leasehold interest to become vested in the present trustees would be by way of an assignment in the usual way. If that is so, the transferors would be the trustees in whose name the property was bought in 1911, but, since those gentlemen are no longer with us, how does one deal with that point? Generally, what is the procedure duly to cause the property, when it becomes a freehold, to continue to remain and become vested in the trustees for the time being as and when they are changed? Possibly the answer to these questions lies in the governing rules of the club, which in that case will have to be found and perused. However, assuming that they do in fact state that all the club's property shall be taken as duly vested in the trustees for the time being, would a resolution appointing new trustees and duly recorded in the minute book suffice to pass the property on to successive trustees?

A. In the case of an unincorporated club there are no such specific statutory provisions covering the devolution of title on a change of trustees as exist in the case of friendly societies (Friendly Societies Act, 1896, s. 50) and chapels (Trustee Appointment Act, 1850). The position has therefore to be considered in the light of the rules of the individual club and the general law relating to private trusts. As the general law may be, and frequently is, modified by the rules of individual clubs, it is obviously of the greatest importance that diligent search should be made for the rules applicable in the present case. If the rules are found to contain a statement that the club's property shall be taken as vested in the trustees for the time being and prescribes the machinery for the appointment of new trustees, then, if the prescribed procedure is followed, and the new trustees are, under such procedure, appointed by deed, the legal estate would vest in the newly appointed trustees by reason of the implied vesting declaration under s. 40 of the Trustee Act, 1925. If, however, the procedure does not require the use of a deed of appointment, there must be a conveyance from all the surviving trustees or the personal representative of the last survivor. For this reason modern club rules usually provide for new trustees to be nominated by a majority at a meeting (of the club or committee) and for the trustees so nominated to be appointed by deed executed by the chairman, this procedure being substantially identical with that prescribed by the Trustee Appointment Act, 1850. If, therefore, the rules cannot be found, or do not provide for appointment in this way, we suggest that new rules be adopted incorporating this procedure and that new trustees be appointed in accordance therewith. The present trustee, who will be the personal representative of the last surviving trustee of 1911, can easily be eliminated by a recital of his refusal to act (Trustee Act, 1925, ss. 36 and 38 (1)). For forms for the new rules, see Encyclopædia of Forms and Precedents, 3rd ed., vol. III, p. 555.

Sale by Personal Representative—Power Reserved to One Executor—Form and Effect of Conveyance

Q. Can you refer us to a precedent of a conveyance by executors where power has been reserved to another executor to prove a testator's will and that other executor has not in fact done so? It occurs to us that where power is reserved in these circumstances the fact should be recited, but none of the precedent books appears to contain such a precedent. If the remaining executor did subsequently prove the will, would the original grant be called in to the Registry, and if a purchaser took title from the executors who originally proved the will would he obtain the legal estate?

A. We do not know of a precedent which deals specifically with the case of power being reserved to an executor who has not proved. As under s. 8 of the Administration of Estates Act, 1925, the proving executors have all the powers of personal representatives it is not now customary to require executors to whom power has been reserved to renounce, and indeed the old practice of requiring a renunciation was of doubtful value since the renunciation could be retracted with the leave of the court. As our subscribers suggest, therefore, the variation will be in the recitals only and the form which the writer has used for some years is as follows: "Whereas XY being at the date of his death hereinafter recited seised in fee simple in possession of the property hereinafter described free from incumbrances made and duly executed his last will which bears the date the day of 19 whereby he appointed AB and CD to be his executors and whereas the said XY died on the day of 19 without having altered or revoked the appointment of executors contained in his said will which was duly proved in the Probate Registry (at) by the said AB power being reserved to the said CD to prove the said will which he has not done." If the remaining executor desires to prove the will he will have to apply for a grant of double probate. The original grant will not, however, be called into the Registry unless the course is taken of marking it instead of the original will or a sealed copy. It is not the usual practice to mark in this way a grant endorsed with memoranda of assents or sales. Whether the original grant is filed in the Registry is not very material, since the grant of double probate will recite the former grant and a purchaser deriving title under the double grant will require to inspect both grants and can see that in the Registry if necessary. A purchaser from the executor taking the original grant will always get a good title to the legal estate, having regard to ss. 8 (1) and 36 of the Administration of Estates Act, 1925.

Settled Land—Dilapidated Mansion House—Powers of Tenant for Life as to Demolition and Rebuilding

Q. We act for the tenant for life of a settlement created by a will dated in November, 1922, of a testator who died in January, 1938. There is settled land on which is an unoccupied mansion house in a dilapidated state. The tenant for life lives in a cottage in the grounds. There are no provisions in the will relating specifically to the mansion house. The trustees have had an independent survey made and the surveyor advises complete demolition. (1) If the mansion is demolished and certain materials sold, who is entitled to the proceeds of sale? Would the cost of demolition fall on the tenant for life? Presumably the tenant for life is the person responsible for the demolition. Can she proceed with the demolition without obtaining (*a*) the written consent of the trustees, and (*b*) an order from the court? (2) If the tenant for life takes no action at all and allows the house to deteriorate further, as we understand the law neither the trustees nor any subsequent tenant for life have any claim against her or her estate. Is this correct? (3) As an alternative to (1) can the tenant for life demolish part of the house, sell such materials as are not required and use the proceeds to repair the remainder and convert it into a dwelling for herself? Would any consents or order be necessary? If the proceeds of materials sold are insufficient to pay for the repair and conversion of the remainder, can capital money be utilised for this purpose?

A. (1) The mansion house is land for the purposes of the Settled Land Act, 1925 (see definition in s. 117 (1) (ix)), and accordingly any proceeds of sale of materials would be capital money and would be receivable by the trustees. The demolition of the mansion house by the tenant for life would be an act of voluntary waste (*Leeds* v. *Amherst* (1846), 2 Phil. 117), and for the demolition to be lawful an order of the court would be necessary. If it could be shown that the demolition was for the benefit of the estate, we have no doubt that the court would permit it and would probably allow a reasonable application

of capital money for the purpose. The position would appear the same even if the tenant for life is expressly exonerated from impeachment for waste, since the demolition would be equitable waste within s. 135 of the Law of Property Act, 1925. Accordingly, if the tenant for life proceeds with demolition (not intending to rebuild) she does so at her own risk and expense. (2) Allowing the deterioration of the mansion house to continue is permissive waste, for which under the pre-1926 law a tenant for life was not liable in the absence of an express direction in the settlement (*Re Cartwright* (1889), 41 Ch. D. 532). Under s. 107 (1) of the Settled Land Act, 1925, a tenant for life is a trustee for all parties interested under the settlement, and it is therefore possible that his liability for permissive waste may have increased in consequence, but in the absence of a decision it is impossible to be certain on this point. Subject to these observations, the position as decided by *Re Cartwright* is as stated by our subscribers.

(3) The rebuilding of the principal mansion house is an improvement authorised by s. 83 and Pt. II of Sched. III to the Settled Land Act, 1925, for which an amount not exceeding one-half of the annual rental of the settled land may be expended out of capital money. If the procedure laid down in s. 84 of that Act is adopted and the above-mentioned limit observed, we see no reason why the materials of the old house should not be used on repairing or improving another dwelling on the estate with a view to its becoming the principal mansion house, as was done in the case of *Morris* v. *Morris* (1858), 3 De G. & J. 323. The new house will become the mansion house by reason of the tenant for life's residence there (*Re Feversham S.E.* (1938), 82 Sol. J. 333). There is, however, an observation by the Court of Appeal in *Morris* v. *Morris* that the sale of the materials of the old mansion house is not permissible and would be equitable waste, and if this is desired we consider that an order of the court should be sought.

NOTES AND NEWS

Honours and Appointments

Mr. A. G. Norris, C.B.E., Assistant Public Trustee, is retiring at the end of June and is being succeeded by Mr. Reginald P. Baulkwill, O.B.E., a Chief Administrative Officer in the Public Trustee Office.

Miscellaneous

LAW REFORM COMMITTEE

The Lord Chancellor's Office announces that the Lord Chancellor has set up a committee, to be known as the Law Reform Committee, to consider, having regard especially to judicial decisions, what changes are desirable in such legal doctrines as he may from time to time refer to the committee. The committee will have power to work through sub-committees consisting of such number of its members as the Chairman, after consultation with the committee, may think fit, together with such other persons as the Lord Chancellor may approve.

Lord Justice Jenkins will be Chairman of the committee and its other members will be the Lord Chief Justice, Lord Asquith, Mr. Justice Devlin, Mr. Justice Parker, Mr. J. N. Gray, D.S.O., Q.C., Mr. Gerald Gardiner, Q.C., Mr. W. J. K. Diplock, Q.C., Mr. R. E. Megarry, Mr. R. J. F. Burrows, Mr. R. T. Outen, Professor A. L. Goodhart, K.B.E., Q.C., Professor Sir David Hughes Parry and Professor E. C. S. Wade. The Secretary of the committee will be Mr. D. W. Dobson, O.B.E., and the Assistant Secretary Mr. K. M. Newman, both of the Lord Chancellor's Office.

Anyone who wishes to suggest subjects for consideration by the committee should send his suggestions to the Secretary, The Law Reform Committee, Lord Chancellor's Office, House of Lords, S.W.1.

SALARIES AND CONDITIONS OF SERVICE FOR LEGAL ADVISERS OF REGIONAL HOSPITAL BOARDS

The Administrative and Clerical Staffs Council have agreed that, in accordance with Award No. 2375 of the Industrial Court, the salary scale for Legal Advisers of Regional Hospital Boards shall be £1,150 x £50—£1,550 with effect from 1st May, 1951. Officers employed in the Metropolitan Police Area shall receive £50 London weighting in addition. The Minister of Health approved these provisions as approved remuneration under Regulation 3 of the National Health Service (Remuneration and Conditions of Service) Regulations, 1951.

THE SOLICITORS ACTS, 1932 TO 1941

On the 13th June, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of Arthur Kemp Whitburn, of Ivy House, The Esplanade, Teignmouth, in the County of Devon, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 13th June, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of Irvine Wright, of 11 Southfield Avenue, Riddlesdon, Keighley, Yorkshire, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 13th June, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that Isidore Levin, of 21 Islington, Liverpool, 3, be suspended from practice as a solicitor for a period of six months from the date of the Order, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 13th June, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon Robert Clayborn Wilson, of 2 Cecil Square, Margate, in the County of Kent, a penalty of twenty-five pounds to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

The Trevor-Johnstone Company, Ltd., assemblers and distributors of "Dictorel" magnetic dictating machines, announce that their new head offices are at 14 Berkeley Street, Piccadilly, London, W.1.

SOCIETIES

The Associated Law Societies of Wales, comprising eleven law societies and including all the law societies in Wales, with the exception of the Chester and North Wales Law Society, held their annual meeting at Llandrindod Wells on 14th June.

The following officers were elected: President, Mr. F. Hubert Jessop (Aberystwyth); Vice-president, Mr. E. Bevan Thomas (Cardiff); Hon. Secretary, Miss Ivy L. Gibson (Aberystwyth); Hon. Treasurer, Mr. R. J. H. Cooke (Welshpool).

The meeting was followed by a luncheon attended by nearly 100 solicitors from all parts of Wales. Distinguished guests included Lord Milner (Deputy Speaker in the House of Commons in the last Government), Mr. D. L. Bateson (Vice-president of The Law Society) and Professor D. J. Llewelfryn Davies (professor of law at the University College of Wales, Aberystwyth).

Lord Milner responded to the toast, "The Law and the Lawyers," Mr. Bateson to "The Law Society," and Professor Davies to "The Visitors."

The 45th Conference of the International Law Association (founded in 1873) will be held at Lucerne, Switzerland, from 31st August to 6th September this year. Among the subjects for discussion will be: Problems of Sovereignty; International Company Law; Air Law; Rights to the Sea-bed and its Subsoil; Trade Marks; State Immunity; International Monetary Law. The President of the Association is Judge N. V. Boeg of Denmark; the Chairman of the Executive Council, the Right Hon. Lord Porter, G.B.E.; and the Hon. Secretary-General, W. Harvey Moore, Q.C. Headquarters: 3 Paper Buildings, Temple, London, E.C.4.

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